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9 **UNITED STATES BANKRUPTCY COURT**
 10 **DISTRICT OF NEVADA**

11 In re:) CHAPTER 13
 12)
 13 MARIA IRENE) CASE NO: 09-17552 MKN
 14 ALMANZA-OLIVARES)
 15) DATE: July 16, 2009
 16 Debtor.) TIME: 3:30 p.m.
 17)

18 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF**
 19 **AMERICAN HOME SERVICING, LLC PURSUANT TO 11 U.S.C. § 506(a) and 1322 §**

20 COMES NOW, Debtors, Maria Irene Almanza-Olivares (hereinafter "Debtors"), by and
 21 through their attorney, Jorge L. Sanchez, of the law firm of SANCHEZ LAW GROUP, LTD.,
 22 and move this Court to modify the rights of American Home Servicing, LLC pursuant to 11
 23 U.S.C. § 506(a), and § 1322, and Bankruptcy Rules 3012 and 9014.

24 In support of this Motion, the Debtors assert the following:

25 1. Debtors filed the instant Chapter 13, Case Number 09-17552 on May 11, 2009.
 26 2. On the petition date, Debtors owned real property located at 2308 Pariva Street,
 27 Las Vegas, Nevada 89115 (hereinafter the "Subject Property").
 28 3. The value of the Subject Property is \$85,500.00 (See
 29 Bankofamerica.cyberhomes.com estimate of property value attached hereto as Exhibit "A").
 30 4. At the time of the filing of Debtors' petition, the Subject property was subject to
 31 the following liens:

32 Countrywide Home Loans	First Mortgage:	\$ 132,999.00
33 American Home Servicing, LLC	Second Mortgage:	\$ 56,116.00

* Please find "Schedule D of Debtors' Chapter 13 Petition attached hereto as Exhibit "B". As neither mortgage creditor has filed a proof of claim as of the filing of this Motion, and Debtors are required to prosecute the instant Motion prior to confirmation of their Chapter 13 plan, Debtors are relying upon both those balances and addresses reported to credit reporting agencies, as set forth on Debtors' Statements from the respective creditors and as previously recorded by said creditors with the Bankruptcy Court, where applicable, in support of this Motion.

5. On the date the instant bankruptcy case was filed, no equity existed in the Subject Property above the claim of Home Servicing, LLC

6. American Home Servicing, LLC's second mortgage claim was wholly unsecured on the petition date and if the Subject Property was sold at auction American Home Servicing, LLC would receive nothing by way of its second mortgage claim.

7. Accordingly, Debtors request that this Court find that American Home Servicing, LLC's second mortgage claim is unsecured and should be reclassified as a general unsecured claim to receive pro rata distribution with other general unsecured creditors through the Debtors' Chapter 13 Plan.

LEGAL ARGUMENT

In *In re Zimmer*, 313 F.3d 1220(9th Cir. 2002), the Court stated that a wholly unsecured lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to U.S.C. § 506(a), despite the anti-modification language in § 1322(b)(2). Specifically the Court held: Section 506(a) divides creditors' claims into "secured . . . claims" and unsecured claims." Although the conventional interpretation of "secured" might include any claim in which the creditor has a security interest in the debtor's property, § 506(a) makes clear that the status of a claim depends on the valuation of the property. An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest as such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Put more simply, a claim such as a mortgage is not a "secured claim" to the extent that it

1 exceeds the value of the property that secures it. Under the Bankruptcy Code, “secured claim” is
 2 a term of art and not every claim that is secured by a lien on property will be considered a
 3 “secured claim.”

4 Here, it is clear that American Home Servicing, LLC’s second mortgage claim for the
 5 repayment of its loan is an unsecured claim because its deed of trust is junior to the first deed of
 6 trust, and the value of the Subject Property.

7 Since American Home Servicing LLC’s second mortgage claim is wholly unsecured (in
 8 that there is no equity above the first mortgage on the Subject Property), Debtors request this
 9 Court reclassify Home Servicing, LLC’s second mortgage claim to a general unsecured claim to
 10 receive pro rata distribution with like unsecured creditors.

11 Further, Debtors request this Court strip Home Servicing, LLC of its secured rights under
 12 State Law since no maintainable security interest in the subject property exists as to Home
 13 Servicing, LLC’s second mortgage claim.

14 Finally, Debtors are not required to file an adversary proceeding to achieve the requested
 15 relief herein. Debtors may bring a motion to “strip off” Home Servicing, LLC’s consensual
 16 second mortgage lien by motion. See *In re Williams*, 166 B.R. 615(Bankr.E.D.Va.1994), *In re*
 17 Fuller, 255 B.R. 300 (Bankr.W.D.Mich.2000).

18 WHEREFORE, Debtors pray this Court:

19 1. “Strip off” and extinguish Home Servicing, LLC’s wholly unsecured second
 20 mortgage lien pursuant to 11 U.S.C., Section 506(a);

21 2. Reclassify Home Servicing, LLC’s second mortgage claim as a general unsecured
 22 claim to be paid pro rata with other general unsecured creditors through the Debtors’ Chapter 13
 23 plan; and

24 3. For such other relief the Court finds appropriate.

25 Dated: June 13, 2009

26 Respectfully Submitted:

27 /s/Jorge L. Sanchez, Esq. /s/

28 Jorge L. Sanchez, Esq.

Attorney for Debtor

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EXHIBIT A
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[Find My Home's Value](#)[close window](#)**Home Value Estimate**

**2308 PARIVA ST
LAS VEGAS, NV 89115-5449
County: CLARK**

The value of this property is estimated between \$85,500 and \$122,300. This estimate is based on public record data and other factors; the actual value of the property may vary. To find out how much you may qualify for based on the value of your home, contact a loan specialist today and they will help customize a loan to best fit your needs.

Range of values High: \$122,300 Low: \$85,500	
Year Built: 1964 Lot size (sf): 6,098 Living Area: 1,280 Stories: 1 Total Rooms: 6	Bedrooms: 4 Bathrooms: 2 Garage: N/A Pool: Yes A/C: Yes

[Get Started](#)[Start Over](#)**Comparable Sales in Area**

The following properties are recently reported sales found in the immediate vicinity of the subject property. These properties are believed to be full value transfers or represent an estimate of the sale.

Sale 1 - 4516 EL TOVAR, LAS VEGAS, NV 89115-5426 (Radius: 0.19 mile)

Sale Date	12/18/2008	Lot Size	6,534	Bedrooms	4
Sale Price	\$85,000	Living Area	1,215	Bathrooms	2

Sale 2 - 4515 EL TOVAR, LAS VEGAS, NV 89115-5460 (Radius: 0.18 mile)

Sale Date	09/03/2008	Lot Size	6,534	Bedrooms	4
Sale Price	\$105,000	Living Area	1,431	Bathrooms	2

Sale 3 - 4448 PAYSON, LAS VEGAS, NV 89115-5458 (Radius: 0.10 mile)

Sale Date	08/27/2008	Lot Size	6,098	Bedrooms	3
Sale Price	\$90,000	Living Area	1,242	Bathrooms	2

Disclaimer: This property valuation is the product of automated valuation technology, public record data and human decisioning logic combined to provide a logical estimate of the possible selling price of a residential property. This valuation is not an appraisal. This valuation estimates property value assuming simple title ownership and the property condition as average for the neighborhood. This property valuation is intended for use only in conformance with state and federal laws. Property valuations are not suitable for complex properties. This valuation contains no representations or warranties regarding marketability, functional or economic obsolescence, environmental contamination or flood insurance determination. This valuation does not warrant the accuracy of any public record information or data sources used to prepare this valuation. This data may not be resold.

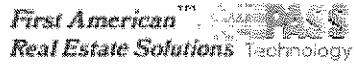
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America, determines the value of a property using the data and valuation tools that the lender considers appropriate and may reach a different valuation than that provided by using this tool.

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2 **EXHIBIT B**
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In re Maria Irene Almanza-Olivares

Case No. 09-17552

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.						
American Home Mtg Svci 4600 Regent Blvd Ste 200 Irving, TX 75063	-	First Mortgage PRIMARY PROPERTY 2308 Pariva Street Las Vegas, NV 89115 FRONTIER NORTH PLAT BOOK 8 PAGE 54 LOT 31 BLOCK 3 SEC 20 TWP 20 RNG 62	-	-	132,999.00	17,999.00
Value \$		115,000.00				
Account No.						
Bac Home Lns Lp/Ctrywd 450 American St Simi Valley, CA 93065	-	First Mortgage INVESTMENT PROPERTY 3935 Rive Gauche Street Las Vegas, NV 89115 NORTHPOINTE UNIT #1 PLAT BOOK 26 PAGE 57 LOT 55 BLOCK 3 SEC 08 TWP 20 RNG 62	-	-	135,200.00	100,200.00
Value \$		35,000.00				
Account No.		2004 Toyota Tacoma 97,000 miles				
Capital One Auto Finan 3901 Dallas Pkwy Plano, TX 75093	-		-	-	13,032.00	10,057.00
Value \$		2,975.00				
Account No. 6930324972306		Opened 6/17/05 Last Active 12/01/08 Second Mortgage PRIMARY PROPERTY 2308 Pariva Street Las Vegas, NV 89115 FRONTIER NORTH PLAT BOOK 8 PAGE 54 LOT 31 BLOCK 3				
Homeq Servicing Po Box 13716 Sacramento, CA 95853	-		-	-	56,116.00	56,116.00
Value \$		115,000.00				
Subtotal (Total of this page)					337,347.00	184,372.00

1 continuation sheets attached

B6D (Official Form 6D) (12/07) - Cont.

In re Maria Irene Almanza-Olivares

Case No. 09-17552

Debtor

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODE DEBTOR H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No.								
The Land Office POB 1811 Dolan Springs, AZ 86441			INVESTMENT PROPERTY Lot 31 Block R Section 7 Lake Mojave Vista Estates Land Only					
			Value \$ 12,250.00				18,500.00	6,250.00
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Account No.								
			Value \$					
Sheet <u>1</u> of <u>1</u> continuation sheets attached to Schedule of Creditors Holding Secured Claims				Subtotal (Total of this page)			18,500.00	6,250.00
				Total (Report on Summary of Schedules)			355,847.00	190,622.00